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IN THE

Supreme Court of the United States

OCTOBER TERM, 1940.

No. 188.

THE UNITED STATES OF AMERICA, *Petitioner*,

v.

THE COWDEN MANUFACTURING COMPANY, *Respondent*.

PETITION FOR REHEARING.

PHIL D. MORELOCK,
Counsel for the Respondent.

Of Counsel:
MORELOCK AND LAMB,
Washington, D. C.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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v.

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To the Chief Justice and the Associate Justices of the Supreme Court:

Comes now the above-named Respondent, Cowden Manufacturing Company, a Missouri Corporation, and presents this, its petition for a rehearing of the above entitled cause, and, in support thereof, respectfully shows:

I.

The Court has erred in failing to recognize that the contract between the respondent and the United States was made in anticipation by both parties of the imposition of processing taxes on the "production and manufacture" of the materials used in making the suits.

At the time the contract between the United States and the respondent was entered into it was known by both parties that a processing tax would be imposed upon the processing of the materials to be used in the making of the suits. The respondent was not a processor and it was

known that it would be compelled to obtain the goods to be used in making the suits from a processor. The processing tax was not determined until July 14, 1933, whereas the contract had been entered into June 14, 1933. The processing tax was not and could not have been included in the bid or the contract price. It was the recognition of these facts which prompted the parties to agree that in addition to the contract price, as a part of respondent's costs, which did not and could not have included the processing tax, the respondent would be entitled to reimbursement for whatever amount of processing tax, if any, it was forced to pay. The function of the respondent in the process of manufacturing the supplies was the cutting of the cotton cloth and sewing it together into the specified shapes or finished article. This was well known to the parties and could not have been the reason for including the tax clause in the contract. If it had not been the intention of the parties that the respondent be reimbursed for the processing tax imposed upon the processing of the cloth used in making the suits there could have been no reason for the incorporation of the provision in the contract.

Knowing that the contemplated tax was on the production of the basic materials which would go into the garments and not on the cutting and putting together the component parts, and knowing that no tax of the latter kind was then thought of or afterwards established, let us look further at the clause and see what the parties must have had in mind. If the language in the tax clause had been thought to have the meaning ascribed to it by the Court, there could have been no reason to put it in the contract. It was known when bids were asked and when the contract was signed that there would be no processing tax on the operations of this respondent in assembling these garments. The term "supplies" as used in the tax clause must therefore have been intended to apply to the materials entering into the completed garment. The materials were the only thing entering into the transaction which could at that time have been reasonably in contemplation as subject to a proc-

essing tax. In other words, if the clause means what the Court has held it to mean, the parties would not have put it in the contract because they knew there would never be a condition which would make it applicable. We must assume that they acted reasonably and undertook by this language to provide for a situation which they definitely then contemplated would arise, and not that they were providing for one which they either knew would not arise or had no reason to anticipate. The whole purpose of the clause was to protect the contractor against increased costs which it could not then determine but which both parties definitely expected. We respectfully submit that the Court's construction of the clause is entirely too narrow, wholly disregarding the conditions under which and the purpose for which the clause was inserted.

The case of *United States* v. *Glenn L. Martin Co.*, 308 U. S. 62, does not support the decision of the Court in this case. There the corporation sued for the recovery of taxes under the provisions of the Tucker Act, 24 Stat. 505; 28 U. S. C. Para. 41(20). The taxes sought to be recovered were social security taxes and unemployment compensation taxes on payrolls of employees. These taxes were clearly outside of the provisions of the contract since they were not imposed upon the production and manufacture of materials delivered to the Government. As stated by this Court, the social security and unemployment compensation taxes were "on the relationship of employment" and were "distinct from * * * the type of tax 'on' articles represented by sales taxes and processing taxes".

It is evident from the facts in the case of *The Telescope Furniture Co.* v. *United States*, 31 F. Supp. 784, that under the terms of a contract identical with that under consideration here, the parties fully understood that the taxes imposed upon the processing of the materials used in the supplies were not to be included in the bid and that reimbursement was to be made to the company furnishing the supplies although not the processor. The bid in that case was made on July 28, 1933. Since the Secretary of Agriculture

had on July 14, 1933, prior to the bids, fixed the amount of the processing tax and had designated August 1, 1933 as the effective date, the company wrote to the War Department and asked whether or not the processing tax, then known, should be included in the bid.

The Government in response to the inquiry clearly stated its policy as follows:

> "(a) If a federal processing tax is in *effect* at the time bids are opened, it will be presumed that the successful bidder included the tax in his bid and no amount in excess of that bid will be paid by the Government.
>
> "(b) If a federal processing tax becomes *effective* after bids are opened or after the contract is made, which tax must be paid by the vendor, the bid price may be increased accordingly in the manner stated in the 'Federal Taxes' paragraph in the invitation to bid, first above referred to."

In that case it was known, as here, that the contractor was not a processor and would be compelled to acquire the materials to be used in the assembling of the canvas cots from the processor. It was known by the parties as in the instant case that the processing tax would have to be paid to the processor, who in turn would pay it to the Government. The use of the term "successful bidder" in paragraph (a) and the term "vendor" in paragraph (b) is significant and emphasizes that the parties intended that the contractor be reimbursed for the addition to its costs of any processing tax paid regardless of to whom paid. Otherwise the War Department could have written *which tax must be paid by the successful bidder to the Government.*

The War Department and the respondent were aware of the likelihood of a processing tax to be imposed upon the processing of the cloth and thread to be used by the respondent in making the suits. They were not able to determine the amount nor the time when the processing tax would become effective. It might not have become effective until after the respondent had completed its contract or the re-

spondent might have been able to furnish the supplies from stocks of goods on hand upon which no tax was required. However, as will be observed from the "Special Findings of Fact," made by the court below (R. 5-6-7), the respondent was compelled to purchase the goods with which to perform its contract from the processor after the tax became effective and was compelled to pay the processing tax which was billed to it as a separate item and not as a part of the purchase price of the goods. Consequently the only fair interpretation of the understanding of the parties is that respondent is entitled to reimbursement for the processing taxes paid which constituted additional costs to it.

II.

The Court has erred in failing to recognize and to give effect to the fact that the contract between the respondent and the Government was made prior to its agreement with the processors.

The Court, in its opinion, refers to the fact that the respondent contracted with the processors to purchase the cloth and thread and that these processors were liable for processing tax on the processing of these articles. The Court then said:

> "At the time these contracts were made no taxes were in effect on the processing of cotton, but in anticipation of such taxes respondent and the subcontractors agreed that respondent would reimburse them for any taxes they were required to pay on the processing of goods sold to respondent, the taxes to be billed as a separate item. Thereafter, respondent received the goods covered by these contracts and compensated the subcontractors for the taxes they were later required to pay on the processing of the cotton."

It is respectfully pointed out that the Court appears to have failed to recognize that the contract between the Government and the respondent was made prior to the contracts between the respondent and the vendors or proces-

sors. It was but natural and right that the respondent pass on to the vendors or processors the same rights of reimbursement which respondent understood to exist under its contract with the Government. There was no profit to any of the parties involved, it being the intent that the respondent pay the tax to the processor, the processor pay the tax to the Government and the Government return it to the respondent. The clause in the contract was primarily for the purpose of stabilizing the bid price to the Government and the purchase price of the materials to the respondent. The Government inserted the clause in the contract in order that respondent might properly determine its costs so as to submit its firm bid to the Government.

The tax clause of the contract was not inserted for the purpose of permitting the recovery of a tax as such. The purpose was that if the unknown element, be it tax or otherwise, should enter into the contractor's *cost*, it should in turn be added to the contractor's bid price. The processing tax represented this additional cost.

It was then necessary that the respondent afford the same protection to the processors from whom it purchased the cloth and thread. The Court has not recognized the existence of any obligation on the part of the Government to reimburse the respondent. The Court said:

> "We are of the opinion that the 'federal taxes' clause does not obligate the United States to reimburse its contractor for taxes which the latter has borne merely as a matter of contract with its subcontractors. On the contrary, the fair import of the clause is that the United States must make reimbursement only for such taxes as the contractor has paid pursuant to an obligation imposed upon him by the statute which exacts the tax."

It is respectfully urged that the proper interpretation of the contract must recognize that the respondent's agreement with the Government for its protection in making its bid was prior to its agreement with the processors and conversely the agreement with the processors followed and was in consequence of its agreement with the Government.

III.

As stated by the Court, "The language of the clause is precise". Therefore it is error to add to the clause by implication language which is not expressly written therein.

The part of the contract which appears to form the basis for the conclusions of the Court may be stated as follows:

> "If any * * * processing tax * * * are imposed * * * and made applicable directly upon the production, manufacture or sale of the supplies covered by this contract and are paid by the contractor on the articles or supplies herein contracted for, * * *"

In considering certain words and phrases in the above, the Court says:

> "The language of the clause is precise. It provides only for reimbursement of those taxes which are 'made applicable directly upon the production, manufacture, or sale of the supplies covered by this contract'. The supplies 'covered by this contract' are the mechanics' suits, the completed articles furnished to the United States. Since the clause further provides in exact language that the tax must be 'directly' applicable, we cannot agree that a tax on cloth, thread and labels is a tax on the supplies 'covered by this contract'. Compare Telescope Furniture Co. v. United States, 31 F. Supp. 780, 784; United States v. Glenn L. Martin Co., 308 U. S. 62."

It is respectfully submitted that the construction placed upon the contract by the Court to the effect that it was intended to and did contemplate the finished article, mechanics' type suits, is not only too narrow but was not the understanding of the parties. The Agricultural Adjustment Act, 48 Stat. 31, making provisions for a processing tax, as, if, when, and in such an amount as was designated by the Secretary of Agriculture, had been enacted May 12, 1933. The National Industrial Recovery Act, 48 Stat. 195, had been enacted June 16, 1933. The parties to this contract and

business men in general, where similar contracts were involved, were concerned with the processing tax which was known to be in the offing, and the additional costs caused by the administration of the National Industrial Recovery Act. At the time of this contract and during the course of its fulfillment there was no other revenue measure pending which would have affected the adjustment contemplated by the contract. The respondent not being a processor, there would have been no reason for the clause to have been inserted in the contract if it had been intended that it apply only to the finished article. It is difficult to see or understand why a general provision such as the one under consideration as to "production and manufacture" would have been written into the contract had it only contemplated the mechanics' type suits after they had been cut and sewed together by the respondent to the exclusion of the material or the operation upon the material which had to enter into the finished article. Suppose the respondent had been a processor and had processed the cloth and thread that went into the suits: the tax of $4,469.98 would have been the same, and the Government would have obtained the tax just the same. Then, if we correctly interpret the decision of the Court, the respondent should have been reimbursed under the contract. In fact, the Comptroller General would have authorized such reimbursement under his interpretation, and the case would never have been in Court. However, the Government has in its possession respondent's money the same as it would have, had the respondent been a processor. When we recognize that business in general and manufacturing in particular are diversified so as to cover a vast field of operation, it is readily apparent that the general clause in the contract had to be constructed so as to apply to all phases of such diversified operations and to each component part of the finished article, and, particularly, to the processing of the materials.

This contract was written by the Government. It is not to be believed that it was doing a useless thing. But it is respectfully submitted that if the language is to be interpreted as the Court has done, then it was an idle gesture to write in the tax clause. There was never any situation to which it could apply. Since the Government wrote the whole contract, if there be ambiguity it must be interpreted most strongly against the Government. We are convinced, however, that it requires only a reasonable construction consistent with the purpose for which it was written to meet a then anticipated and probable tax.

Where as in this case the processing of the materials, which was a part of the operation of manufacture, was done by a party different from the contractor, it was merely necessary to extend to that party the same protection as the contractor believed it had under its contract with the Government.

The Court said:

> "Moreover, the clause stipulates for reimbursement of taxes 'paid by the contractor'. It is reasonable to conclude that this phrase also contemplates payment of taxes to the United States in consequence of an obligation imposed by statute upon respondent. For while in a sense, perhaps, respondent 'paid' these processing taxes, it is more accurate to say that they were 'paid' by the subcontractors who merely shifted their burden to respondent as a separate item of the contract price. The clause as a whole indicates that this was the sense to be attributed to the phrase quoted."

In order to justify the construction indicated by the Court, it appears to us that there must be added to the quoted "paid by the contractor" the words *directly to the Government*. Is it not rather reasonable to assume that those who framed the clause in question, did not intend to confine the protection to those who paid the money directly to the Collector of Internal Revenue, and in formulating the clause contemplated just such a situation as existed here where the processor was merely a conduit

through which the money representing taxes passed from the respondent to the Government?

It is axiomatic that things which equal the same things are equal to each other. The tax came to the Government from the respondent through the processor, therefore the Government came into possession of the tax just the same as if it had received the check of the respondent. It does not appear that those who are responsible for the clause in the contract were concerned so much with the form and method of collection of the tax as they were with the question of whether as a matter of fact the Government received the tax. This was the attitude taken by Government Counsel when they were before the Court of Claims in the case of the *Batavia Mills, Inc.* v. *United States,* 85 Ct. of Cls. 447, as we have pointed out in our brief filed with the Court, at page twelve.

In this connection, it is important to refer to the facts as found by the Court below showing exactly what happened (R. 7). Pursuant to the protective clause which respondent had granted to the processors from whom it had purchased the cloth and thread, the processors billed the respondent *as a separate item for the exact amount* of the tax which they were to pay to the Government. The respondent then paid the processing tax to the processors.

As an ultimate fact with respect to the disposition of the tax, the Court below found (R. 7):

> "Processing taxes *in the same amount* were paid by Grantville Manufacturing Company, the processor, *to the Collector of Internal Revenue,* which amount was included in larger amounts of processing taxes paid by said processor." (Italics ours)

In other words, there can be no doubt of the fact that the Government was paid the tax of $4,469.98. It is difficult to see how any complex question of the incidence of the tax could arise from this simple state of facts. The Court with respect to this phase of the matter said:

> "A contrary construction of the 'federal taxes' clause introduces difficulties not contemplated by the parties. It would force them to trace the taxes back to the one upon whom the obligation first rested, whether the subsequent transactions were simple or complex. For if it could be said in this case that the processing taxes were imposed on the supplies covered by the contract and were paid by the contractor, it would be immaterial how far the contractor were removed from the original processor if the former could show that the burden of the tax had been shifted as the processed articles had changed hands and perhaps form. We can find nothing which suggests that the parties intended to draft a clause that would operate in such fashion."

In expressing the above thought and concern, we believe the Court had in mind the ordinary case involving the incidence of a tax. For example, if the tax is imposed upon A, who as a part of his sales price shifts it to B, who as a part of his sales price shifts it to C, and C, then, as a part of his sales price shifts it to X, Y and Z (the public), it is difficult to ascertain as to whom in the course of the procedure bore the burden of the tax and in what amount. In this type of case the rules *with respect to tax refunds* have been established in the cases of *United States* v. *Jefferson Electric Manufacturing Co.*, 291 U. S. 386, and *Lash's Products Company* v. *United States*, 278 U. S. 175.

The question of tax shifting as the term is ordinarily used does not enter into the situation here. There was really no shifting of taxes. As heretofore indicated, as a matter of protection, and in order that respondent could make a firm bid, the contract was entered into between the Government and the respondent. Then in turn the respondent granted to its vendors the same contractual protection. The Government fixed the amount of the tax which it determined to collect from the processor, who in turn sent the bill for the same amount to the respondent. If the respondent had been selling the mechanics type suits to customers other than the government no doubt the taxes would have been added to the sales price of the articles and then the tax would have

been shifted to the public. However, there existed a contract between the Government and the respondent to the effect that if the respondent would make to the Government a firm bid not including in its costs the processing tax then the Government would reimburse the respondent on account of any funds which the Government *as a matter of fact* collected from the respondent as processing tax, even though the tax were collected through another. This the Government failed to do and therein lies what we earnestly urge is our just complaint.

It appears to be immaterial that the form of the article upon which the tax was imposed changed from cloth to suits. The tax which is the subject of controversy did not change and as a matter of fact was specifically identified. Furthermore, that which we consider to be the meat of the contract has been found as a fact, to wit, *the Government collected the tax and now has the tax in its possession.*

IV.

The decision of this Court in substance grants to the Government a rebate and in effect relieves the Government from payment of the contract price for the supplies as provided by the contract.

In accordance with its contract with the Government and the amendment thereto, the respondent was to and did furnish to the Government 35,220 suits mechanics type B-1. The contract price paid to respondent was $66,918.00, or $1.90 per suit. It can readily be seen that after the purchase of material and payment of labor costs there could have been very little, if any, profit in making this price article. The Government then imposed a tax upon the processing of the materials used in making the suits of $4,469.98. If the respondent had not possessed other funds, it would have had to pay $4,469.98 out of the $66,918.00. In any event the facts show that the tax of $4,469.98 was paid to the Government through the processor so that the net amount paid out by the Government was $66,918.00 less $4,469.98, or

$62,448.02. In other words, the Government in effect received a rebate of $4,469.98 and whereas the contract called for the purchase price of the supplies to be $66,918.00, as an actual fact the supplies cost the Government $62,448.02. On the other hand, respondent, while receiving $66,918.00, was compelled to repay to the Government through the processor, $4,469.98, and consequently instead of $66,918.00, retained $66,918.00 less $4,469.98, or $62,448.02. In other words the price per suit was as a matter of fact reduced from $1.90 to $1.77 per suit, or 6.8 per cent reduction on gross sales value. It is a well known fact that the percentage of profit on Government contracts, owing to the competitive system of bidding, is not very large, and may well have failed to absorb the reduction.

It is our contention that the clause in question was inserted in the contract so that the bid price of $66,918.00 would be stabilized and that this full amount, no more and no less, should represent the cost of the supplies. As a matter of fact the Government has done that which it did not intend should be done by others, in that it has profited by a rebate of $4,469.98. The Government has the tax in its possession. Can the Government be permitted to profit at the expense of the respondent through such construction of language which appears precise and definite?

V.

Had Respondent and its vendors not relied upon the fulfillment of their contracts the tax might have been recovered under specific statute which remedy is not now available.

The respondent met its obligations to its vendors immediately upon the rendering of the invoices for $4,469.98. Then the respondent in 1933 requested payment from the Government of the $4,469.98 under the provisions of its contract. The claim of the respondent was under consideration in various stages until the final rejection by the Comptroller General in his decision of August 11, 1936,

A-68085 (R. 8). The claim of respondent was made upon the basis of its contract long before the Agricultural Adjustment Act as amended was declared unconstitutional by this Court on January 6, 1936 in the case of *United States* v. *Butler*, 297 U. S. 1. The origin of respondent's claim lay in its contract and was effective regardless of the constitutional status of the Agricultural Adjustment Act as amended.

Had it not been for the contractual relationship between the Government and the respondent and the contractual obligation between the respondent and its vendors there might have been a recovery of the tax as such after the Agricultural Adjustment Act was declared unconstitutional and Title VII of the Revenue Act of 1936 (49 Stat. 1648, 1747) was enacted by Congress. That Act provided: (Title 7 U. S. C. A. No. 644) entitled "Conditions on allowance of refunds":

> "No refund shall be made or allowed, in pursuance of Court decisions or otherwise, of any amount paid by or collected from any claimant as tax under this Chapter, unless the claimant establishes to the satisfaction of the Commissioner in accordance with regulations prescribed by him, with the approval of the Secretary, or to the satisfaction of the trial court, or the Board of Review in cases provided for under section 648 of this title, as the case may be—
>
> "(b) That he has repaid unconditionally such amount to his vendee (1) who bore the burden thereof, (2) who has not been relieved thereof nor reimbursed therefor, nor shifted such burden, directly or indirectly, and (3) who is not entitled to receive any reimbursement therefor from any other source, or to be relieved of such burden in any manner whatsoever." June 22, 1936, 9:00 P. M., C 690 ¶ 902, 49 Stat. 1747.

The Special Findings of Fact of the Court of Claims (R. 7) establishes that the respondent bore the burden of the tax. If it had not been for the contract with the Government for reimbursement, the respondent could have established that it could not have been relieved of the tax. If

the respondent's contract with the Government was not effective so as to establish the right to reimbursement then the respondent, after the enactment of the above statute, might have obtained relief through its vendors, who in turn could have obtained the refund from the Government of the $4,469.98 if they had repaid it to the respondent. However, the respondent having met its obligation to its vendors under contract made after and in reliance upon its contract with the Government, could not in good faith have requested reimbursement from its vendors. The vendors were not in any way benefited by the payment of the $4,469.98 to them by the respondent because they (R. 7) were the mere conduits through which the money flowed to the Government. The right of the processors to any claim for refund, even if they had voluntarily repaid the funds to the respondent after the enactment of the Revenue Act of 1936 expired July 1, 1937, as provided by the Act which time was later extended to January 1, 1940 by amendment to the Social Security Act.

It is respectfully urged that the respondent, having the contract for reimbursement with the Government and based thereon having extended the same rights to its vendors was bound in good conscience to maintain its claim for reimbursement with the Government and not with the vendors or processors.

For the foregoing reasons, it is respectfully urged that this petition for a rehearing be granted, and that the judgment of the Court of Claims be, upon further consideration, affirmed.

Respectfully submitted,

PHIL D. MORELOCK,
Counsel for the Respondent.

Of Counsel:
MORELOCK AND LAMB.

I hereby certify that the foregoing petition is presented in good faith and not for delay.

PHIL D. MORELOCK,
Counsel for the Respondent.

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SUPREME COURT OF THE UNITED STATES.

No. 188.—October Term, 1940.

United States, Petitioner,
vs.
Cowden Manufacturing Co., Respondent.

On Writ of Certiorari to the United States Court of Claims.

[January 13, 1941.]

Mr. Justice Murphy delivered the opinion of the Court.

Respondent seeks reimbursement from the United States of the amounts paid to processors to compensate them for processing taxes paid on cotton goods sold to respondent. The suit is based on a contract between respondent and the United States rather than on Title VII of the Revenue Act of 1936 (49 Stat. 1648, 1747) which authorizes refunds to processors, under certain circumstances, of processing taxes illegally collected under the Agricultural Adjustment Act (48 Stat. 31). The question is whether the "federal taxes" clause of the contract obligates the United States to make the reimbursement.

Prior to June 6, 1933, the War Department called for bids on a contract to furnish a certain kind of mechanic's suit. On June 6, 1933, respondent submitted its bid, and on June 24, 1933, executed a contract with the United States whereby respondent agreed to furnish a specified number of the suits at a stated price. The contract provided, in the "federal taxes" clause, that: "Prices set forth herein include any Federal Tax heretofore imposed by the Congress which is applicable to the material purchased under this contract. If any sales tax, processing tax, adjustment charge, or other taxes or charges are imposed or changed by the Congress after the date set for the opening of the bid upon which this contract is based and made applicable directly upon the production, manufacture, or sale of the supplies covered by this contract and are paid by the contractor on the articles or supplies herein contracted for, then the prices named in this contract will be increased or decreased accordingly. . . ."

To perform its contract with the United States, respondent contracted to purchase cotton cloth, thread, and labels from subcontractors who were liable, as processors, to pay any processing taxes levied on the articles sold to respondent. At the time these contracts were made no taxes were in effect on the processing of cotton, but in anticipation of such taxes respondent and the subcontractors agreed that respondent would reimburse them for any taxes they were required to pay on the processing of goods sold to respondent, the taxes to be billed as a separate item. Thereafter, respondent received the goods covered by these contracts and compensated the subcontractors for the taxes they were later required to pay on the processing of the cotton. It has performed its contract with the United States and now claims that the quoted provision obligates the United States to pay respondent the amounts it has paid its subcontractors to compensate them for the processing taxes they have paid. Because the Comptroller General rejected its claim, respondent brought this suit in the Court of Claims and obtained judgment. 32 F. Supp. 141. We granted certiorari on October 14, 1940, to resolve the uncertainty as to the correct construction of the "federal taxes" clause which appears in a large number of government contracts.

The only question is whether the United States, in the "federal taxes" clause, has agreed to pay respondent the amount respondent paid its subcontractors to reimburse them for taxes paid on the processing of the goods sold to respondent. We hold that it has not.

We are of opinion that the "federal taxes" clause does not obligate the United States to reimburse its contractor for taxes which the latter has borne merely as a matter of contract with its subcontractors. On the contrary, the fair import of the clause is that the United States must make reimbursement only for such taxes as the contractor has paid pursuant to an obligation imposed upon him by the statute which exacts the tax.

The language of the clause is precise. It provides only for reimbursement of those taxes which are "made applicable directly upon the production, manufacture, or sale of the supplies covered by this contract". The supplies "covered by this contract" are the mechanics' suits, the completed articles furnished to the United States. Since the clause further provides in exact language that the tax must be "directly" applicable, we cannot agree that a tax on the

cloth, thread, and labels is a tax on the "supplies covered by this contract". Compare *Telescope Folding Furniture Co.* v. *United States,* 31 F. Supp. 780, 784; *United States* v. *Glenn L. Martin Co.,* 308 U. S. 62.

Moreover, the clause stipulates for reimbursement of taxes "paid by the contractor". It is reasonable to conclude that this phrase also contemplates payment of taxes to the United States in consequence of an obligation imposed by statute upon respondent. For while in a sense, perhaps, respondent "paid" these processing taxes, it is more accurate to say that they were "paid" by the subcontractors who merely shifted their burden to respondent as a separate item of the contract price. The clause as a whole indicates that this was the sense to be attributed to the phrase quoted.

A contrary construction of the "federal taxes" clause introduces difficulties not contemplated by the parties. It would force them to trace the taxes back to the one upon whom the obligation first rested, whether the subsequent transactions were simple or complex. For if it could be said in this case that the processing taxes were imposed on the supplies covered by the contract and were paid by the contractor, it would be immaterial how far the contractor were removed from the original processor if the former could show that the burden of the tax had been shifted as the processed articles had changed hands and perhaps form. We can find nothing which suggests that the parties intended to draft a clause that would operate in such fashion.

We conclude that the quoted clause does not obligate the United States to compensate respondent for taxes which were paid by its subcontractors and were merely shifted to respondent pursuant to their subcontract. The judgment of the Court of Claims is reversed and the cause is remanded with directions to dismiss the petition.

It is so ordered.

A true copy.

Test:

Clerk, Supreme Court, U. S.